

Federal Maritime Commission

§ 540.9

such bond shall be in an amount calculated as in the introductory text of § 540.5.

(c) In the case of a surety bond which is to cover an individual voyage, such bond shall be in an amount determined by the Commission to equal the gross passenger revenue for that voyage.

(d) The liability of the surety under the rules of this subpart to any passenger shall not exceed the amount paid by any such passenger, except that, no such bond shall be terminated while a voyage is in progress.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990]

§ 540.7 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been given or a satisfactory bond has been provided, a Certificate (Performance) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to indemnify passengers for nonperformance of water transportation. The period covered by the Certificate (Performance) shall be indeterminate, unless a termination date has been specified thereon.

§ 540.8 Denial, revocation, suspension, or modification.

(a) Prior to the denial, revocation, suspension, or modification of a Certificate (Performance), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission, except that a Certificate (Performance) shall become null and void upon cancellation or termination of the surety bond, evidence of insurance, guaranty, or escrow account.

(b) A Certificate (Performance) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Performance);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations or orders of the Commission pursuant to the rules of this subpart.

(c) If the applicant, within 20 days after notice of the proposed denial, revocation, suspension, or modification under paragraph (b) of this section, requests a hearing to show that such denial, revocation, suspension, or modification should not take place, such hearing shall be granted by the Commission.

§ 540.9 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person to whom the Certificate (Performance) is to be issued, and in case of a partnership, all partners shall be named.

(c) The Commission's bond (Form FMC-132A), guaranty (Form FMC-133A), and application (Form FMC-131) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(d) Any securities or assets accepted by the Commission (from applicants, insurers, guarantors, escrow agents, or others) under the rules of this subpart must be physically located in the United States.

(e) Each applicant, insurer, escrow agent and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of its death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the agent for service of process. A

party serving the Secretary in accordance with the above provision must also serve the Certificant, insurer, escrow agent, or guarantor, as the case may be, by registered mail at its last known address on file with the Commission.

(f) [Reserved]

(g) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.8 (a) or (b).

(h) Every person who has been issued a Certificate (Performance) must submit to the Commission a semiannual statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. Such statements must cover every 6-month period of the fiscal year immediately subsequent to the date of the issuance of the Certificate (Performance), and include a statement of the highest unearned passenger vessel revenue accrued for each month in the 6-month reporting period. In addition, the statements will be due within 30 days after the close of every such 6-month period.

(i) [Reserved]

(j) The amount of: (1) Insurance as specified in § 540.5(a), (2) the escrow account as specified in § 540.5(b), (3) the guaranty as specified in § 540.5(c), or (4) the surety bond as specified in § 540.6, shall not be required to exceed 15 million dollars (U.S.).

(k) Every person in whose name a Certificate (Performance) has been issued shall be deemed to be responsible for any unearned passage money or deposits in the hands of its agents or of any other person or organization authorized by the certificant to sell the certificant's tickets. Certificants shall promptly notify the Commission of any arrangements, including charters and subcharters, made by it or its agent with any person pursuant to which the certificant does not assume responsibility for all passenger fares and deposits collected by such person or organization and held by such person or organization as deposits or payment for

services to be performed by the certificant. If responsibility is not assumed by the certificant, the certificant also must inform such person or organization of the certification requirements of Public Law 89-777 and not permit use of its name or tickets in any manner unless and until such person or organization has obtained the requisite Certificate (Performance) from the Commission.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 34568, Aug. 23, 1990]

FORM FMC-131 TO SUBPART A OF PART
540

FORM FMC-131

FEDERAL MARITIME COMMISSION

Washington, DC 20573

APPLICATION FOR CERTIFICATE OF FINANCIAL
RESPONSIBILITY

In compliance with the provisions of Public Law 89-777 and 46 CFR part 540, application is hereby made for a Certificate of Financial Responsibility (check one or both as applicable):

☐ for indemnification of passengers for nonperformance. ☐ Initial application ☐ Certificate has previously been applied for (if so, give date of application and action taken thereon).

☐ to meet liability incurred for death or injury to passengers or other persons. ☐ Initial application ☐ Certificate has previously been applied for (if so, give date of application and action taken thereon).

Instructions

Submit two (2) typed copies of the application to the Secretary, Federal Maritime Commission, Washington, DC 20573. The application is in four parts: Part I—General; Part II—Performance; Part III—Casualty and Part IV—Declaration. Applicants must answer all questions in part I and part IV, then parts II and/or part III as appropriate. Instructions relating to part II and part III are contained at the beginning of the respective part. If the information required to be submitted under 46 CFR part 540 has been previously submitted under other rules and regulations of the Commission, state when and for what reason such information was submitted. If previously submitted, it is not necessary to resubmit. If additional space is required, supplementary sheets may be attached.